



California Regional Water Quality Control Board Los Angeles Region

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Linda S. Adams
Acting Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

July 11, 2011

Mr. Michael Kim
Lynwood Dairy
12306 S. Atlantic Avenue
Lynwood, CA 90262

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7005 1820 0001 2683 7099

T & T Family Trust
c/o Mr. Thomas I. Hwang
& Mrs. Young H. Hwang
136 South La Peer Drive
Beverly Hills, California 90211-2616

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7005 1820 0001 2683 7327

COMPLAINT NO. R4-2011-0094 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST MR. MICHAEL KIM AND THE T & T FAMILY TRUST REGARDING FAILURE TO COMPLY WITH CLEANUP AND ABATEMENT ORDER FOR THE PROPERTY LOCATED AT 12306 S. ATLANTIC AVENUE, LYNWOOD, CALIFORNIA (LYNWOOD DAIRY: UST FILE R-02653).

Dear Messrs. Michael Kim, Thomas I. Hwang and Mrs. Young H. Hwang:

Enclosed is Complaint No. R4-2011-0094 for Administrative Civil Liability in the amount of **\$118,710** against Mr. Michael Kim, and the T & T Family Trust, Thomas I. Hwang and Young H. Hwang (Trustees) (hereinafter Respondents) for certain alleged violations of Cleanup and Abatement Order No. R4-2008-0001. Also enclosed are the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing and Administrative Civil Liability Fact Sheet for this matter.

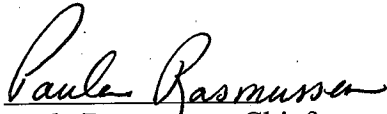
Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Respondents choose to waive their right to a hearing, an authorized agent must sign the waiver form attached and return it to the Regional Board by 5:00 pm on August 10, 2011. If we do not receive the waiver and full payment of the penalty by August 10, 2011, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, and location of the hearing will be mailed to you prior to the hearing date.



July 11, 2011

If you have any questions, please contact Mr. David Boyers, Staff Counsel III Supervisor, State Water Resources Control Board Office of Enforcement, at (916) 341-5276 or dboyers@waterboards.ca.gov

Sincerely,



Paula Rasmussen, Chief
Compliance and Enforcement Section

- Attachments: 1. Administrative Civil Liability Complaint No. R4-2011-0094 and Waiver Form
2. Notice of Public Hearing
3. Administrative Civil Liability Fact Sheet

cc: Mr. David Boyers, State Water Resources Control Board, Office of Enforcement
Ms. Sarah Olinger, Office of the Chief Counsel, State Water Resources Control Board
Mr. Samuel Unger, Los Angeles Regional Water Quality Control Board
Ms. Kathy Jundt, State Water Resources Control Board,
Underground Storage Tank Cleanup Fund
Mr. Tim Smith, Los Angeles County Department of Public Works, Environmental
Programs Division



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**Mr. Michael Kim and the
T & T Family Trust, Mr. Thomas I.
Hwang and Mrs. Young H. Hwang
(Trustees)**

**Complaint No. R4-2011-0094
For
Administrative Civil Liability**

**Violations of Cleanup and Abatement Order
No. R4-2008-0001
(as amended March 15, 2010)**

July 11, 2011

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Mr. Michael Kim, and the T & T Family Trust, Thomas I. Hwang and Young H. Hwang (Trustees) (collectively Respondents) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) may impose civil liability pursuant to Water Code section 13350.
2. Unless waived, a hearing on this matter will be held before the Los Angeles Water Board, or a panel of Los Angeles Water Board members, within 90 days following issuance of this Complaint. Respondents, or their representative(s), will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability.
3. At the hearing, the Los Angeles Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

BACKGROUND

4. Lynwood Dairy and Gasoline Station (Site) is located at 12306 South Atlantic Avenue, City of Lynwood. Mr. Michael Kim has operated the Site since approximately February, 2000. T & T Family Trust is the property owner of the Site.
5. On January 25, 2008, the Los Angeles Water Board issued Cleanup and Abatement Order No. R4-2008-0001 (Order) to Mr. Michael Kim and "Lynwood Dairy," requiring the cleanup and abatement of contaminated soil, soil gas and groundwater pollution caused by the release of petroleum hydrocarbons from three underground storage tanks (UST) once located at the Site. On March 15, 2010, the Los Angeles Water Board amended the Order to remove "Lynwood Dairy" as a responsible party and added the T & T Family Trust. The amended Order made the following pertinent findings regarding the Site:
 - a) On June 21, 2000, one 8,000-gallon UST, one 6,000-gallon UST and one 4,000-gallon UST were removed. Soil samples were collected beneath the tank excavation pit and dispenser areas. The soil samples analytical results indicated

the maximum concentrations of total petroleum hydrocarbons as gasoline (TPHg) at 6,040 mg/kg, benzene at 30,000 µg/kg, and MTBE at 139,000 µg/kg.

- b) The Site overlies an aquifer used as a community water supply and the distance to the closest municipal well or domestic supply well (No. 03S13W13F04S) is approximately 2,450 feet from the Site.
 - c) Based on information from adjacent sites, depth to groundwater is approximately 60 feet below ground surface (bgs) in the area.
6. The amended Order directed the Respondents to take certain actions to assess, monitor, report, clean up and abate the effects of gasoline discharged to soil and groundwater. The Los Angeles Water Board specifically warned the Respondents that failure to comply with the terms of the Order would result in the imposition of administrative civil liability.

ALLEGATIONS

PART 1: Requirement B.

CONDUCT SITE INVESTIGATIONS TO ASSESS SOIL, SOIL GAS AND GROUNDWATER CONTAMINATION

- 7. Requirement B on Page 6 of Cleanup and Abatement Order No. R4-2008-0001, as amended March 15, 2010, directs the Respondents to develop and submit by **May 15, 2010**, a workplan to conduct soil, soil gas and/or groundwater investigations necessary to fully define the extent of soil, soil gas and groundwater contamination.
- 8. Respondents submitted the required workplan on July 7, 2010, **53** days past the due date of May 15, 2010.
- 9. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
- 10. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
- 11. Attachment A to this Order indicates the proposed civil liability for the violations described in Part 1, above, derived from the use of the penalty methodology in the Enforcement Policy.
- 12. As described in Attachment A, the proposed liability for the violations described in Part 1, above, is **\$6,300**.

PART 2: Requirement C

CONDUCT CORRECTIVE ACTIONS TO MITIGATE SOIL, SOIL GAS AND GROUNDWATER CONTAMINATION

13. Requirement C on Page 6 of Cleanup and Abatement Order No. R4 2008-0001 requires that Respondents develop and submit, by **May 15, 2010**, an interim remedial action plan to evaluate and propose the most viable interim remedial alternatives to mitigate the soil, soil gas and/or groundwater contamination.
14. Respondents have failed to submit the interim remedial action plan in accordance with Requirement C. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
15. To date, Respondents have been in violation of Requirement C for **423** days (May 15, 2010 – July 11, 2011).
16. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
17. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Enforcement Policy adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
18. Attachment B to this Order indicates the proposed civil liability for the violations described in Part 2, above, derived from the use of the penalty methodology in the Enforcement Policy.
19. As described in Attachment B, the proposed liability for the violations described in Part 2, above, is **\$189,750**.

Part 3: Requirement D

CONDUCT GROUNDWATER MONITORING AND REPORTING

20. Requirement D on Page 6 of Cleanup and Abatement Order No. R4-2008-0001 requires that the Respondents submit quarterly groundwater monitoring reports, with the first report due June 15, 2010, and describes what information the reports must contain.
21. The Respondents have failed to install any groundwater monitoring wells and submit any quarterly groundwater monitoring reports in accordance with Requirement D. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
22. To date, Respondents have been in violation of Requirement D for **362** days. (July 15, 2010 – June 24, 2011)
23. The groundwater monitoring reports are required in order to determine impacts to water quality caused by past operations at the site in order to facilitate remediation efforts in accordance with Water Code section 13304. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
24. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Enforcement Policy adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
25. Attachment C to this Order indicates the proposed civil liability for the violations described in Part 3, above, derived from the use of the penalty methodology in the Enforcement Policy.
26. As described in Attachments C, the proposed liability for the violations described in Part 3, above, is **\$165,000**.

MAXIMUM LIABILITY

27. Pursuant to Water Code section 13350, the maximum administrative civil liability which could be imposed by the Los Angeles Water Board for failing to comply with requirements of Cleanup and Abatement Order No. R4-2008-0001 is five thousand dollars (\$5,000) for each day in which the violation occurs.

As shown in the table below, the maximum liability that may be imposed for the violations described in Parts 1 through 3, above, is four million one hundred ninety thousand dollars (**\$4,190,000**).

Part	Requirement	Days of Violation	Maximum Potential Liability
Part 1	Submit a Workplan for site investigations to assess soil, soil gas and groundwater contamination	53	\$265,000
Part 2	Submit Interim Remediation Action Plan (RAP) to mitigate soil, soil gas and groundwater contamination	423	\$2,115,000
Part 3	Submit Quarterly groundwater monitoring reports	362	\$1,810,000
TOTAL			\$4,190,000

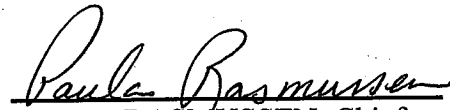
MINIMUM LIABILITY

28. Pursuant to the Enforcement Policy, the minimum administrative civil liability that shall be imposed by the Los Angeles Water Board is the amount of economic benefit derived from the violations, plus 10 percent. The economic benefit for the violations is the estimated cost to produce the required technical reports. According to the last estimate established by the State Water Resources Control Board UST Cleanup Fund, and based on current industry cost and historical costs to prepare similar technical reports, it is estimated that the cost to develop the required workplan and RAP is \$5,000 per report and the cost to develop and submit the 4 delinquent quarterly groundwater monitoring reports, as outlined in Cleanup and Abatement Order No. R4-2008-0001 is \$7,000 per report. Therefore, the cumulative economic benefit of not producing the reports is approximately \$38,000. The minimum liability is the economic benefit amount, plus 10 percent, or forty one thousand eight hundred dollars (\$41,800).

PROPOSED LIABILITY

29. As described in Attachments A through C, the combined liability for the violations associated with Parts 1 through 3, is \$361,050. Given the considerations described in Attachment AA however, it is recommended that the Los Angeles Water Board impose civil liability against the Respondents in the lesser amount of **\$118,710**. If the Respondents elect to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 11th day of July, 2011.


PAULA RASMUSSEN, Chief

Compliance and Enforcement Section

ATTACHMENT A

Calculation of Liability for Violations Described in Part 1:

1. Step 1 – Potential for Harm for Discharge Violations

The failure to timely develop and submit a workplan in accordance with Requirement B is a “non-discharge violation.” Therefore this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The failure to timely develop and submit a workplan in accordance with Requirement B is a “non-discharge violation.” Therefore this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is minor because the failure by the Respondents to timely submit the *Site Assessment Workplan* outlining how they would conduct soil, soil gas and groundwater investigations to fully define the extent of gasoline contamination did not result in an appreciable increase in the threat to human health and beneficial uses. In this case, the report was 53 days late.

The Extent of Deviation from applicable requirements is minor because the site assessment workplan was ultimately submitted, 53 days late.

Using “TABLE 3 – Per-day Factor” and applying a Potential for Harm of minor and an Extent of Deviation of minor results in a factor of **0.15**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.15) \times (53 \text{ days of violation}) \times (\$5,000) = \mathbf{\$39,750}$$

4. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to timely submit a workplan as required by Requirement B lasted 53 days.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30 days of violation. This results in the consideration of 7 days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.15) \times (7 \text{ days of violation}) \times (\$5,000) = \$5,250$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.0 has been selected. Although the workplan was not submitted by the due date required, it was eventually submitted.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

Though this is a non-discharge violation, the Respondents have been historically slow to comply with Regional Board directives since the original California Water Code section 13267 Order was issued in 2001. The Respondents have been in violation of the original California Water Code section 13267 Order to submit the same workplan since its original due date of May 31, 2001. Since the three UST extractions in 2000 and the discovery of contaminated soil, no site assessment work has been performed making it very difficult for the Regional Board to evaluate the exposure risks to human health and beneficial uses (i.e. drinking water resources) for over 10 years. No cleanup has occurred at this Site to date. Even though the Los Angeles Regional Board received the required workplan 53 days past the due date and subsequently provided conditional approval of the workplan in a letter dated August 31, 2010, the Respondents have refused to implement the workplan and conduct any correction action. Respondents have shown limited cooperation to assess and clean up the site. Therefore, a multiplier of 1.2 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.0 is proposed because the Respondents, together, do not have a history of violations known to the Los Angeles Water Board. Any history of violations by Mr. Kim associated with the Cleanup and Abatement Order, prior to its amendment on March 15, 2010, is not considered here.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$\begin{aligned} &(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \times \\ &(\text{History of Violations}) = (\text{Total Base Liability Amount}) \end{aligned}$$

$$(\$5,250) \times (1.0) \times (1.2) \times (1.0) = \mathbf{\$6,300}$$

6. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT B

Calculation of Liability for Violations Described in Part 2:

7. Step 1 - Potential for Harm for Discharge Violations

The failure to develop and submit an interim remedial action plan in accordance with Requirement C is a "non-discharge violation." Therefore this step does not apply.

8. Step 2 – Assessments for Discharge Violations

The failure to develop and submit an interim remedial action plan in accordance with Requirement C is a "non-discharge violation." Therefore this step does not apply.

9. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the interim remedial action plan is necessary in order to mitigate the effects of the release of petroleum hydrocarbons at the Site. As described in the Complaint, soil samples taken at the time the underground storage tanks were removed indicated the maximum concentrations of TPHg at 6,040 mg/kg, benzene at 30 mg/kg, toluene 124 mg/kg, ethylbenzene 62 mg/kg, total xylenes at 211 mg/kg and MTBE at 139 mg/kg. These values are 5 to over 600 times the Regional Board's soil screening levels (SSLs) for the protection of groundwater quality and municipal (drinking water) beneficial uses. The nearest municipal well is less than one half of a mile downgradient. Furthermore, the un-remediated soil vapors from the former UST area pose a direct health threat to the inhabitants of the adjacent apartment complex, single family homes, Lynwood Dairy employees and patrons.

The Extent of Deviation from applicable requirements is major because the Respondents have disregarded the requirement to submit the interim remedial action plan and therefore the intended effectiveness of the requirement has been undermined.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of **0.55**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.55) \times (423 \text{ days of violation}) \times (\$5,000) = \mathbf{\$1,163,250}$$

10. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The failure to develop and submit an interim remedial action plan as required by Requirement C has lasted 423 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends that an alternate approach to penalty calculation be applied, but that the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to develop and submit an interim remedial action plan results in a commensurate delay in the implementation of the plan and the cleanup of the Site. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment of each 10 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380, 390, 400, 410 and 420 days of violation. This results in the consideration of 46 days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.55) \times (46 \text{ days of violation}) \times (\$5,000) = \$126,500$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.5 has been selected. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents that failure to submit the interim remedial action plan would result in the imposition of administrative

civil liability. Because the Respondents knew of the requirement to submit the interim remedial action plan and were warned of the consequence for continued non-compliance, their failure to do so is considered intentional misconduct. Therefore, a multiplier of 1.5 is appropriate.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1.0 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.0 is proposed because the Respondents, together, do not have a history of violations known to the Los Angeles Water Board. Any history of violations by Mr. Kim associated with the Cleanup and Abatement Order, prior to its amendment on March 15, 2010, is not considered here.

11. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \times (\text{History of Violations}) = (\text{Total Base Liability Amount})$$

$$(\$126,500) \times (1.5) \times (1.0) \times (1.0) = \$189,750$$

12. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT C

Calculation of Liability for Violations Described in Part 3:

13. Step 1 - Potential for Harm for Discharge Violations

The failure to submit quarterly groundwater monitoring and sampling reports as required by Requirement D is a "non-discharge violation." Therefore this step does not apply.

14. Step 2 – Assessments for Discharge Violations

The failure to submit quarterly groundwater monitoring and sampling reports as required by Requirement D is a "non-discharge violation." Therefore this step does not apply.

15. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit quarterly groundwater monitoring and sampling reports results in a substantial potential for harm. Quarterly groundwater monitoring data is required to monitor the progress of the corrective actions taken at the site and determine the travel time of the contaminant plume towards the municipal well owned by Park Water Company, ½-mile downgradient. Without these reports, it is very difficult to ensure that cleanup is taking place in order to protect beneficial uses, determine impact or threat posed to water resources and ultimately bring the Site to closure.

The Extent of Deviation from applicable requirements is major because the Respondents have completely disregarded the requirement to submit quarterly groundwater monitoring and sampling reports.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of **0.40**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.55) \times (362 \text{ days of violation}) \times (\$5,000) = \$995,500$$

16. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and

provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit quarterly groundwater monitoring and sampling reports as required by Order Requirement B has lasted 362 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends that an alternate approach to penalty calculation be applied, but that the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to submit quarterly groundwater monitoring and sampling reports impacts the ability to monitor the cleanup progress and the ability to determine the travel time of the contaminant plume towards the municipal well owned by Park Water Company. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment of each 10 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 40, 50, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, 260, 270, 280, 290, 300, 310, 320, 330, 340, 350, and 360 days of violation. This results in the consideration of **40** days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability = $(0.55) \times (40 \text{ days of violation}) \times (\$5,000) = \mathbf{\$110,000}$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.5 has been selected. In a letter dated September 9, 2010, the Los Angeles Water Board notified the Respondents that failure to submit quarterly groundwater monitoring and sampling reports would result in the imposition of administrative civil liability. Because the Respondents knew of the requirement to submit quarterly groundwater monitoring and sampling reports, and were warned of the consequence for continued non-compliance, their failure to do so is considered intentional misconduct. Therefore, a multiplier of 1.5 is appropriate.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1.0 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1.0 is proposed because the Respondents, together, do not have a history of violations known to the Los Angeles Water Board. Any history of violations by Mr. Kim associated with the Cleanup and Abatement Order, prior to its amendment on March 15, 2010, is not considered here.

17. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \times (\text{History of Violations}) = (\text{Total Base Liability Amount})$$

$$(\$110,000) \times (1.5) \times (1.0) \times (1.0) = \$165,000$$

18. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT AA

Application of Steps 6-10 to Combined Total Base Liabilities
Determined in Attachments A through C

The Combined Total Base Liability Amounts for the violations discussed in Attachments A through C is:

(Total Base Liability for Violations in **Part 1**) +
(Total Base Liability for Violations in **Part 2**) +
(Total Base Liability for Violations in **Part 3**) =

Combined Total Base Liability

\$6,300 + \$189,750 + \$165,000 = \$361,050

Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Los Angeles Water Board has sufficient financial information necessary to assess the violator's ability to pay the Combined Total Base Liability or to assess the effect of the Combined Total Base Liability on the violator's ability to continue in business, then the Combined Total Base Liability Amount may be adjusted downward.

The Los Angeles Water Board Prosecution Team has enough information to suggest that the Respondents have the ability to pay the proposed liability, so that the burden of rebutting this presumption shifts to the Respondents. The Respondents own and operate the Lynwood Dairy Gasoline Station in Lynwood, CA and, in addition, the Respondents own property shown in the table below:

Owner(s)	Assessor's Parcel Number	Property Address	Total Assessed Value	Assessment Year	Land Use
T & T Family Trust	7313-030-029	1355 W. Willow Street, Long Beach CA 90810	\$226,930	2009	Retail Store
T & T Family Trust	6077-003-001	10804 S. Western Ave., Los Angeles CA 90047	\$193,662	2009	Retail Store
T & T Family Trust	6015-004-001	6400 S. Western Ave., Los Angeles CA 90047	\$244,654	2009	Retail Store

Owner(s)	Assessor's Parcel Number	Property Address	Total Assessed Value	Assessment Year	Land Use
T & T Family Trust	6016-005-013	6401 S. Western Ave., Los Angeles CA 90047	\$155,697	2009	Auto Repair Service
T & T Family Trust	5075-031-003	1818 W. Washington Blvd., Los Angeles CA 90007	\$138,630	2009	Vacant Lot
T & T Family Trust	5075-031-002	1814 W. Washington Blvd. Los Angeles CA 90007	\$260,759	2009	Cemetery
T & T Family Trust	5075-031-009	1923 Raymond Ave., Los Angeles CA 90007	\$128,265	2009	Parking Lot
T & T Family Trust	5075-031-006	1917 Raymond Ave., Los Angeles CA 90007	\$228,032	2009	Light Industrial
T & T Family Trust	5075-031-014	1951 Raymond Ave., Los Angeles CA 90007	\$114,013	2009	Vacant Residential Lot
T & T Family Trust	5075-031-010	1929 Raymond Ave., Los Angeles CA 90007	\$99,751	2009	Single Family Residence
T & T Family Trust	6002-025-032	6101 S. Normandie Ave., Los Angeles CA 90044	\$127,392	2009	Auto Repair Service
T & T Family Trust	6031-015-031	333 E. Rosecrans Ave., Gardena CA 90248	\$209,303	2009	Service Station
T & T Family Trust	5075-031-022	1908 S. Mariposa Ave., Los Angeles CA 90007	\$407,912	2009	Warehouse
T & T Family Trust	6002-025-004	Los Angeles	\$173,400	2008	Parking Lot
T & T Family Trust	6077-003-002	Los Angeles	\$72,252	2009	Parking Lot
T & T Family Trust	4333-001-021	136 S. La Peer Dr., Beverly Hills CA 90211	\$726,505	2009	Single Family Residence

Given the assets and sources of income described above, and without further information concerning the Respondent's ability to pay, there is no basis to adjust the proposed liability.

19. Step 7 – Other Factors As Justice May Require

Staff has incurred costs of investigation and enforcement for issuing the complaint in the amount of \$46,500. This represents approximately 310 hours of staff time devoted to investigating and

drafting the Complaint at \$150 per hour. These costs should be added to the Combined Total Base Liability amount.

Although Cleanup and Abatement Order R4-2008-0001 was issued pursuant to authority of Water Code 13304, the requirement to produce groundwater monitoring reports, as described in Part 3 of this Complaint, are also authorized pursuant to Water Code section 13267(b)(1), which provides, "in conducting an investigation...the regional board may require that any person who has discharged...waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports..." Persons who violate the requirement to submit technical or monitoring program reports may be liable for up to \$1,000 per day, in accordance with Water Code section 13268. This is a substantially lesser penalty than the \$5,000 per day liability that may be imposed upon any person who violates the requirements of a cleanup and abatement order under Water code section 13350. Because the requirements to produce technical reports, as described in Parts 1, 2 and 3 of this Complaint, fit squarely within the authority of Water Code section 13267, the amount of liability imposed for this violation should be commensurate with the maximum liability set forth in Water Code section 13268, which is one fifth the maximum liability set forth in Water Code section 13350. Therefore, it is appropriate to reduce the Total Base Liability for violations in Parts 1, 2 and 3 to one fifth of their original amounts, as shown below:

Part 1 (Violation 1) = $\$6,300 / 5 = \$1,260$ (reduction of \$5,040)

Part 2 (Violation 2) = $\$189,750 / 5 = \$37,950$ (reduction of \$151,800)

Part 3 (Violation 3) = $\$165,000 / 5 = \$33,000$ (reduction of \$132,000)

20. Step 8 – Economic Benefit

The Enforcement Policy directs the Los Angeles Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit for the violations is the estimated cost to produce the required technical reports. According to the last estimate established by the State UST Cleanup Fund, and based on current industry cost and historical cost to prepare similar technical reports, it was estimated that the cost to develop the required workplan and RAP was \$5,000 per report and the cost to submit the 4 delinquent quarterly groundwater monitoring and sampling reports, as outlined in Cleanup and Abatement Order No. R4-2008-0001 was \$7,000 per report. Therefore, the economic benefit for the discharger for not producing the reports is approximately \$38,000.

The adjusted total base liability amount suggested would recover the economic benefit.

Step 9 – Maximum and Minimum Liability Amounts

Statutory Maximum

The Enforcement Policy directs the Los Angeles Water Board to consider the maximum liability amounts set forth in the applicable statutes.

As described in Paragraph 27 of the Complaint, the maximum potential liability for the alleged violations is **\$4,190,000**.

Statutory Minimum

There is no statutory minimum liability for a violation of Water Code section 13350, unless there is a discharge that occurs in conjunction with each day of violation. However, the enforcement policy directs the Regional Water Quality Control Board to recover, at a minimum, ten percent more than the economic benefit. In this case that would be **\$41,800**

21. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation of failing to pay the annual fee was performed as follows:

$$(\text{Combined Total Base Liability Amount}) + (\text{Staff Costs}) + / - (\text{Adjustment for Other Factors as Justice May Require}) = (\text{Final Liability Amount})$$

Final Liability Amount:

$$(\$361,050) + (\$46,500) - (\$5,040) - (\$151,800) - (\$132,000) = \mathbf{\$118,710}$$

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2011-0094

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Mr. Michael Kim and the T & T Family Trust (hereinafter "Respondents") in connection with Administrative Civil Liability Complaint No. R4-2011-0094 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

- ☐ **(OPTION 1: Check here if the Respondents waive the hearing requirement and will pay the recommended liability.)**
- a. I hereby waive any right the Respondents may have to a hearing before the Regional Water Board.
 - b. I certify that the Respondents will remit payment for the civil liability imposed in the amount of **\$118,710** by check that references "ACL Complaint No. R4-2011-0094" made payable to the "*Cleanup and Abatement Account*". Payment must be received by the Regional Water Board by **August 10, 2011** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
 - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Respondents having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
 - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Respondents to further enforcement, including additional civil liability.

- ☐ **(OPTION 2: Check here if the Respondents waive the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Respondents may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Respondents will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Respondents request that the Regional Water Board delay the hearing so that the Respondents and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(Print Name and Title)
For Mr. Michael Kim

(Print Name and Title)
For T & T Family Trust

Signature

Signature

Date

Date

**PUBLIC HEARING NOTICE FOR THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

**320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600**

ACLC No. R4-2011-0094

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS**

RESPONDENTS

**MR. MICHAEL KIM AND
T & T FAMILY TRUST
(TRUSTEES THOMAS AND
YOUNG HWANG)**

SITE LOCATION

**LYNWOOD DAIRY
12306 S. ATLANTIC
AVENUE, LYNWOOD,
90262, CALIFORNIA**

RECEIVING WATER

**LAKEWOOD FORMATION:
EXPOSITION, GAGE AND
GARDENA AQUIFERS,
COASTAL PLAIN OF LOS
ANGELES**

Administrative Civil Liability Complaint ("ACLC") No. R4-2011-0094 alleges that Mr. Michael Kim, and property owners T & T Family Trust (Trustees Mr. Thomas and Young Hwang) (hereinafter Respondents) violated Cleanup and Abatement Order No. R4-2008-0001 issued on January 25, 2010, and amended on March 15, 2010, that directed the Respondents to take certain actions to assess, monitor, report and cleanup and abate the effects of gasoline discharged to soil and groundwater. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of **\$118,710** be assessed against the Respondents for these violations.

Pursuant to Water Code section 13228.14, the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process that will be used at this hearing.

I. HEARING DATE AND LOCATION

Date: October 6, 2011

Time: 9:00 A.M.

Place: To be determined (TBD)

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on September 16, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Mr. Michael Kim and T & T Family Trust (Trustees Mr. Thomas and Young Hwang)
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on August 22, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a

statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Mr. Dixon Oriola, Senior Engineering Geologist Specialist. Mr. David Boyers, Senior Staff Counsel from the State Water Resources Control Board's Office of Enforcement will advise the Prosecution Team prior to and at the panel hearing. Neither Mr. David Boyers nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager and to the Prosecution Team's counsel:

Dixon Oriola
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6747
doriola@waterboards.ca.gov

David Boyers
State Water Resources Control Board
Office of Enforcement, 16th Floor
1001 I Street, Sacramento CA
(916) 341-5276
dboyers@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **August 17, 2011**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

Mr. Michael Kim and T & T Family Trust (Respondents) are required to submit:

- 1) Any additional documents or evidence the Respondents want the Hearing Panel to consider,

- 2) A summary of any legal and technical arguments and testimony the Respondents intend to present,
- 3) The name of each witness, if any, whom the Respondents intend to call at the hearing, and
- 4) A statement regarding how much time the Respondents need to present the case

to the attention of the Case Manager of the Prosecution Team and the Prosecution Team's counsel (as identified above) and other designated parties so that it is received by **5:00 pm on September 30, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **September 26, 2011**.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on August 8, 2011**. If possible, please submit written comments in Word format electronically to doriola@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Respondents' presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on September 6, 2011** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B., above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Mr. Samuel Unger, and a Legal Advisor, Ms. Sarah Olinger, Staff Counsel for the Regional Board. Neither Mr. Samuel Unger nor Ms. Sarah Olinger have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on September 6, 2011**.

Ms. Sarah Olinger
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 324-6682
solinger@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on September 6, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: July 11, 2011

Administrative Civil Liability

Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years;
 - A list of major accounts receivable with names and amounts;
 - A list of major accounts payable with names and amounts;
 - A list of equipment acquisition cost and year purchased;
 - Ownership in other companies and percent of ownership for the last three years;
 - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village;
 - County;
 - Municipality with enterprise fund;
 - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - Population;
 - Number of persons age 18 and above;
 - Number of persons age 65 and above;
 - Number of Individual below 125% of poverty level;
 - Median home value;
 - Median household income.
3. Current or most recent estimates of:
 - Population;
 - Median home value;
 - Median household income;
 - Market value of taxable property;
 - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;

9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

Instructions

1. Select Potential Harm for Discharge Violations

2. Select Characteristics of the Discharge

3. Select Susceptibility to Cleanup or Abatement

4. Select Deviation from Standard

5. Click "Determine Harm & per Gallon/Day."

6. Enter Values into the Yellow highlighted fields

Select Item

Potential Harm for Discharge Violations

Select Item

Characteristics of the Discharge

Select Item

Susceptibility of Cleanup or Abatement

Select Item

Deviation from Requirement

Select Item

Potential Harm for Discharge Violations

Select Item

Characteristics of the Discharge

Select Item

Susceptibility of Cleanup or Abatement

Select Item

Deviation from Requirement

Select Item

Potential Harm for Discharge Violations

Select Item

Characteristics of the Discharge

Select Item

Susceptibility of Cleanup or Abatement

Select Item

Deviation from Requirement

Select Item

Potential Harm for Discharge Violations

Select Item

Characteristics of the Discharge

Select Item

Susceptibility of Cleanup or Abatement

Select Item

Deviation from Requirement

Discharger Name/ID: Lynwood Dairy

			Violation 1		Violation 2		Violation 3		
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)							
	Step 2	Per Gallon Factor (Generated from Button)							
		Gallons							
		Statutory / Adjusted Max per Gallon (\$)							
		Total		\$ -		\$ -		\$ -	
		Per Day Factor (Generated from Button)	0		0		0		0
		Days							
		Statutory Max per Day							
Total			\$ -		\$ -		\$ -		
Non-Discharge Violations	Step 3	Per Day Factor	0.15		0.55		0.55		
		Days	7		46		40		
		Statutory Max per Day	\$ 5,000		\$ 5,000		\$ 5,000		
		Total		\$ 5,250.00		\$ 126,500.00		\$ 110,000.00	
	Initial Amount of the ACL			\$ 5,250.00		\$ 126,500.00		\$ 110,000.00	
Add'l Factors	Step 4	Culpability	1	\$ 5,250.00	1.5	\$ 189,750.00	1.5	\$ 165,000.00	
		Cleanup and Cooperation	1.2	\$ 6,300.00	1	\$ 189,750.00	1	\$ 165,000.00	
		History of Violations	1	\$ 6,300.00	1	\$ 189,750.00	1	\$ 165,000.00	
	Step 5 Total Base Liability Amount			\$ 361,050.00					
Step 6 Ability to Pay & to Continue in Business		1	\$ 361,050.00						
Step 7 Other Factors as Justice May Require		Staff Costs	1	\$ 361,050.00					
			\$ 46,500	\$ 407,550.00					
Step 8 Economic Benefit		\$ 41,800	\$ 407,550.00						
Step 9 Minimum Liability Amount									
		\$ 4,190,000							
Step 10 Final Liability Amount			\$ 407,550.00						

Penalty Day Range Generator

Start Date of Violation= 5/15/10
End Date of Violation= 7/6/10

Maximum Days Fined (Steps 2 & 3) = 53 Days
Minimum Days Fined (Steps 2 & 3) = 7 Days